

Legal Update 7/29

Delta Smelt update

- Jurisdictional issue – can Wanger make a ruling on the Fall X2 action?
- X2 is the salt line within the Delta. The federal officials are trying to push it further west, while those who are opposing this state that locating X2 so far west would require a lot more water to be released, water that could be used elsewhere. Plaintiffs claim that there is nothing in the current BiOp to justify the federal defendant's current X2 action.
 - The plaintiffs say that adopting this proposal would further reduce the amount of water that is delivered to 25 million Californians and several million acres of farmland.
- On June 24th, Judge Wanger held that the district court retains jurisdiction during the pendency of appeal to act to preserve the status quo, thus he has jurisdiction to hear the Plaintiff's request for injunctive relief against the Fall X2 action. Wanger stated that this is not a case where the requested actions will change the judgment in a way that will affect the case on appeal.
- Hearing is being held July 26-29th.
- Federal defendants have all filed appeals in the 9th Circuit

Army Corps Levee Policy

- Army Corps has adopted a one size fits all levee maintenance program that requires clear cutting of all vegetation except short grasses on or within 15 feet of levees.
- A coalition of environmental groups including Friends of the River, Center for Biological Diversity, and Defenders of Wildlife, has filed suit to prevent implementation of this policy
- The groups also request the Corps re-work their variation program as the current system is burdensome and vague.
- Furthermore, from what we understand, various state agencies are exploring options with regard to this matter, but no final decisions have been made.

Canal Takings

- The California Supreme Court has ordered a new review of whether land surveys by DWR to prepare for a new conveyance alignment referred to in the article as a peripheral canal or tunnel are legal.
- The lower court ruled that the state cannot drill on private lands in search of the best route for a new aqueduct but they can continue to walk along the farmer's properties.
- The farmers argue that this amounts to taking a temporary easement of their land and thus they should be justly compensated under eminent-domain law.

Tehama-Colusa and Butte County

- Both of these are cases involving an area of origins dispute.
- Tehama-Colusa case is in federal court with Wanger
- In Tehama-Colusa a group of Sacramento Valley water districts is claiming that they should get their entire federal water allotment before any water goes to the San Joaquin Valley. They base their claim on the "area of origin" law in the water code. The law allows property owners, cities and other entities in counties where the rivers originate to get preferential water allocation for development and other uses. Waiting on final decision
- Butte County is in state court in Sacramento County
- The case deals with the fact that the county is promised, and pays for, 27,500 acre feet of water a year but does not receive anywhere close to this amount. Currently Butte County only uses 2,500 acre feet of water. Butte County argues that based off of area of origins water rights that were established back when the Oroville Dam was built, they should always receive their full allotment, despite water shortage years.